IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 822 of 2006

Arvind Gover Khutiya .. Appellant

versus

Municipal Corporation of Gr.Bombay.. Respondent

...

Mr.A.K. Abhyankar i/b Shishir Joshi for the appellant

Mr.R.A. Malandkar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 6th December 2006

P.C.:

1. Heard counsel for the parties. By consent, heard finally at the stage of admission itself.

2. The respondent municipal corporation issued a notice under section 351 of the Mumbai Municipal

Corporation Act for removal of the alleged unauthorised structure of mezzanine floor. In view of the policy of the corporation about regularisation of the mezzanine floor, the appellant filed a suit against the respondent for an injunction. The said suit was disposed of by the Court by an order dated 21st December 2005 with a direction to the appellant to make a representation before the concerned Officer within three months regarding the regularisation. The representation was made by a letter dated 10th March 2006. Respondent required further information for considering the representation and therefore by its letter dated 21st April 2006 called upon the appellant to furnish certain additional documents within one month. The documents were furnished by the appellant by a reply dated 15th May 2006. However, even before the expiry of one month granted by the respondent. The respondent by an order dated 2nd May 2006 rejected the proposal of the appellant.

3. As the respondent himself had granted time of one month by its letter dated 26th April 2006 to the appellant for submitting the additional documents obviously the order could not have been passed before the expiry of the period of one month and without

consideration of the documents which were submitted by the appellant on 15th May 2006.

4. In view of this, appeal deserved to be allowed. Accordingly, appeal is allowed and the following order is passed:

. Respondent is directed to consider the application made by the appellant for regularisation on its own merits but after consideration of the documents already submitted. Counsel for the appellant agrees that the appellant shall submit a duplicate of the application along with the duplicate set of documents to the Ward Officer within a period of two weeks with a copy to the counsel for the respondent. Counsel for the respondent agrees to furnish the copies to the concerned officer. The respondent shall not demolish the alleged structure until its decision on the representation made by the appellant and for a period of four weeks thereafter.

(D.G. KARNIK, J)